

CHAPTER 15. FAMILY LAW RULES

15.1 Law and Motion

- a. **Matters Heard.** All non-Title IV-D actions, including but not limited to orders to show cause, motions, and other requests for relief under the Family Law Act, Uniform Parentage Act, Uniform Interstate Family Support Act, Uniform Child Custody Jurisdiction actions and other domestic relations matters shall be heard on the family law and motion calendar of the superior court. All Title IV-D actions shall be calendared to be heard by the Child Support Commissioner.
- b. **Meet and Confer Requirement.** Prior to a hearing on the law and motion and order to show cause calendar and the short cause calendar, counsel shall be required to meet and confer with the opposing party or his or her counsel in an attempt in good faith to resolve all issues. In the event the parties are not actually present, they shall be immediately available to their counsel for authority to stipulate to the resolution of any and all issues. All relevant documents shall be exchanged between the parties prior to or at the time of said conference. In the circumstance where both parties have previously appeared, the exchange of documents should normally take place in conjunction with the filing of the pleadings or moving papers as required by these rules, absent good cause to the contrary.

Failure to so meet and confer may result in the matter being continued or dropped from the calendar, or the rejection of documents that have not previously been exchanged, or other appropriate sanctions within the discretion of the court.

- c. **Income and Expense Declaration.** No case shall be heard unless current Income and Expense Declarations in the form prescribed by rule 1285.50 of the California Rules of Court have been completed and filed by each side. A current declaration means a declaration filed within thirty (30) days of the date of the scheduled hearing. In the event there is a recent Income and Expense Declaration on file, but not within the thirty (30) day provision, and there are no changes in that declaration, a party may file a declaration under penalty of perjury ratifying said Income and Expense Declaration.

All blanks in the Income and Expense Declaration shall be filled in with the appropriate figures or the designation of n/a. The Income and Expense Declaration will be considered as received in evidence at the hearing subject to amendment and cross examination. If current documentation has not previously

been provided, no less than five (5) court days before the scheduled hearing, the following documents shall be exchanged between the parties:

1. Current wage statements representing a consecutive period of at least two (2) months;
2. Most recent Federal income tax returns and W-2 statement;
3. If the individual is self-employed, the most recent profit and loss statement of the business or other accounting to evidence the net monthly disposable income available to said person from the business.

d. Court Hearing re: Income and Expense Information. It is the intent of these local rules that both sides shall be fully informed prior to the hearing of the documents supporting the figures in the Income and Expense Declaration. Direct examination on matters covered by the Income and Expense Declaration will be heard only under exceptional circumstances within the court's discretion and normally will be limited to testimony regarding unusual items not adequately explained in the Income and Expense Declaration.

Eff. Jan. 1, 1999.

15.5 Law And Motion and Order to Show Cause Calendar; Short Cause Setting

- a. Moving Papers to be Filed within 15 Days of Hearing.** All original motions and orders to show cause, together with all supporting documents, including the moving party's Income and Expense Declaration, shall be filed and served at least fifteen (15) days prior to the date set for hearing unless an order shortening time has been issued.
- b. Responsive Pleadings and Points and Authorities.** Any responsive pleadings, including the responding party's Income and Expense Declaration and points and authorities, if applicable, shall be served and filed no less than five (5) court days prior to the date of hearing. Unless good cause is shown, failure to comply will result in refusal by the court to consider such papers.
- c. Matters Limited to a Maximum of Thirty (30) Minutes.** The matters to be heard on the family law and motion and order to show cause calendar shall be limited to a maximum of thirty (30) minutes time. Said thirty (30) minutes shall be divided up fifteen (15) minutes per

side absent an agreement between the parties or counsel to the contrary. In the event a matter exceeds the allotted thirty (30) minutes duration, the court shall continue the matter to another law and motion calendar, set it for a short cause hearing, or drop it from the calendar. The court will expect counsel to give realistic and firm time estimates so that if a matter has the potential of exceeding thirty (30) minutes, counsel will set it for a short cause hearing as provided below.

d. Matters Exceeding Thirty (30) Minutes - Short Cause Calendar.

Matters on the family law and motion and order to show cause calendar which are estimated to exceed thirty (30) minutes, but less than two (2) hours, in duration shall be set for hearing on the short cause calendar. Following is the procedure for having such a matter placed on the short cause calendar:

1. If the moving party estimates that the matter will take more than thirty (30) minutes but less than two (2) hours, then the moving party shall file its request that the matter be placed on the short cause calendar together with the original moving papers, giving the reason and basis for the estimate that it will exceed thirty (30) minutes in duration.

Prior to filing its moving papers, the moving party shall obtain from the court clerk the next available short cause date and set the hearing for that date and time. The request for the short cause setting shall be served on the opposing party along with the other moving papers.

2. When the moving party has set a matter for hearing on the law and motion calendar and the opposing party anticipates that the hearing will take in excess of thirty (30) minutes, but less than two (2) hours, then the opposing party shall file, at least five (5) court days prior to the scheduled hearing, a request that the matter be placed on the next available short cause hearing date. The opposing party shall include the next available short cause hearing date in the request. In the event the opposing party is unable to file its request within the five (5) day deadline, the opposing party shall at the earliest opportunity notify the moving party of its intention to request the matter go to the short cause calendar.
3. Absent a stipulation between the parties, matters set for a law and motion calendar that are subsequently estimated to exceed the thirty (30) minute limitation shall remain on that law and

motion calendar for the continuation or entry of temporary order pending the short cause hearing.

4. The court will expect parties and/or their counsel to exercise good faith in utilizing this procedure for short cause hearings. This includes realistic and binding time estimates on law and motion calendars so as not to exceed the thirty (30) minute limitation, as well as realistic time estimates for the short cause calendar. In the event the court determines that any party is intentionally under or over estimating the time in order to gain advantage or cause a delay, the court shall impose sanctions on that party and/or their attorney.

e. Temporary Support Orders

1. **Duration of Temporary Support Orders.** Unless otherwise specifically ordered, temporary orders for child support or spousal support shall remain in effect until the time of trial or subsequent order of the court.
2. **Recipients of Public Assistance Benefits.** If either or both parties are receiving public assistance benefits, then that party shall serve a copy of their moving or responsive pleadings upon the District Attorney, Family Support Division.

Eff. Jan. 1, 1999.

15.3 Child and Spousal Support

- a. **Temporary/Permanent Child Support.** Temporary and permanent child support will be set pursuant to the provisions of California Family Code section 4000 et seq.
- b. **Spousal Support.** Spousal support shall be determined pursuant to California Family Code section 4300 et seq.
- c. **Child and Spousal Support - Last Month or Last Year as Indicia of Net Disposable Income.** In determining net disposable income, the court will normally look to current income - within the last month or so. The court will average income over several months of a year only when a party is seasonally employed, receives bonuses or commissions which cannot be predicted, or for some other reason current income is not a good indicator of income of the immediate future. Findings of fact are normally made against any party failing to document earnings by pay stubs or tax returns.

d. Commencement Date of Payments. Unless the court orders otherwise, the commencement date for child support or spousal support payments shall be the date upon which the motion or other pleadings requesting such payment were filed. Any payment made by one party to the other for such purpose after the date such motion or pleading is filed shall be deducted from the sum ultimately ordered to be paid for such period. To make such determination, the sum ordered for the period shall be reduced by the sum actually paid for the period. If the result is a positive number, the person ordered to make the payment shall pay the sum forthwith. If the result is a negative figure, it will be credited against the sum owing by the obligor for the next period in which the obligor has a net sum owing. All such adjustments shall be due and payable upon the filing and serving of the order of support.

e. Costs of Visitation - Travel Expenses

1. Subject to paragraph (f) below, the cost of travel expenses for parental contact shall be shared equally;
2. If the income of the parties after payment of support (child and/or spousal) is substantially different, the court may adjust the above allocation to meet the parents' respective needs and ability to pay.

f. Travel Expenses-Distant County or Out of State. The court may order one party to pay more than his/her share of travel expenses if that party caused the need for travel expenses by moving to a distant county or state.

Eff. Jan. 1, 1999.

15.4 Ex Parte Orders

a. Application for Ex Parte Order; Declaration. An ex parte order will be issued only if the application is accompanied by a declaration adequate to support its issuance. An ex parte order will not be issued unless one of the following conditions exist:

1. Adequate advance notice was given to the adverse party or their attorney of record so that party might oppose the application. Adequate advance notice if the adverse party or attorney of record is located within Mendocino County shall be defined as a minimum of 4 hours. Adequate advance notice to a party or attorney of record located out of the county shall be

reasonable depending on the distance and time necessary to travel to the court;

2. It clearly appears in the declaration that giving notice would frustrate the purpose of the proposed order;
3. The applicant would suffer an irreparable injury before the adverse party could be heard in opposition; or,
4. It appears by declaration that no significant burden or inconvenience will result to the adverse party.

b. Order Excluding from Home. An application for an ex parte restraining order excluding either party from the family dwelling or the dwelling of the other must be supported by a declaration showing immediate and serious harm, specifying in detail the time and place of any past act or acts of alleged misconduct and stating why an order shortening time would not be practicable.

c. Order Changing Custody of Minor. As provided by Family Code section 3064, the court will not make an ex parte order granting or modifying custody unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. In addition, the supporting declaration shall set forth, in brief, the circumstances under which the child will be placed pending hearing.

d. Time of Ex Parte Hearing. To obtain a date and time for an ex parte hearing call the family law department.

Eff. Jan. 1, 1999.

15.5 Child Custody Evaluations

- a. The following Local Rules of Court are designed to implement California Rules of Court, Rule 1257.3.
- b. The court shall not permit a peremptory challenge of a court ordered evaluator. Any challenge for cause must be presented by noticed motion to the court within five (5) days of the appointment of the evaluator.
- c. Any court ordered evaluator may petition the court for permission to withdraw from any particular case with notice of said request to be given to all parties of record.
- d. If a party or his or her attorney has any complaint regarding a court ordered evaluator, he or she should bring that complaint to the

attention of the court by means of writing a letter to the court or through the filing of a motion. Whether the complaint is made by letter or by motion, a copy of said letter or motion must be served by mail on all parties. The court, at its discretion, will forward the complaint to the evaluator.

- e. No party or attorney for a party shall initiate contact with a court appointed evaluator, orally or in writing, to discuss the merits of the case without giving the other party notice and an opportunity to be present or to receive a copy of a written communication. Nothing in this Rule shall prohibit the court appointed evaluator from contacting either party or attorney.
- f. Upon ordering an evaluation, the court shall specify under what code section the evaluator has been appointed and the purpose and the scope of the evaluation.
- g. Any court ordered evaluator shall adhere to the uniform standards of practice for court ordered child custody evaluations contained in California Rules of Court, Rule 1257.3.
- h. The court shall, at its sole discretion, determine and allocate between the parties of any fees or costs or any court ordered evaluation taking all relevant evidence into consideration.

Eff. Jan. 1, 2003

15.6 Parent's Workshop Required When Children Involved in Action

In an action for a dissolution of marriage or legal separation where there are minor children involved in such action, and in any action to determine paternity or any action for modification of custody and visitation, each parent is required to attend a parent's workshop.

The petitioner/plaintiff should sign up to attend the workshop in conjunction with the filing of his or her initial papers. The respondent/defendant should sign up to attend the workshop as soon as practicable after being served with the papers. It is not necessary that the parents attend the same session or class.

Each parent shall contact the agency designated by the court to obtain an appointment for a parent's workshop, attend the workshop and pay all fees associated therewith. The court will require proof of satisfactory completion of the workshop. The completion or the failure to complete the workshop will be a factor that will be considered by the court in any further custody/visitation hearings.

Eff. Jan. 1, 1999.

15.7 Attorney's Fees and Costs Award Request

In all cases where attorney's fees and costs are requested subsequent to the services rendered, counsel shall submit a declaration itemizing the fees and costs and identify the specific legal authority for the award. When fees and costs are requested pendente lite, counsel shall submit a declaration describing the anticipated services and/or cost items with reasonable particularity and shall identify the specific legal authority for the award.

Eff. Jan. 1, 1999.

15.8 Mandatory Settlement Conferences Prior to Dissolution Trial

- a. Time And Place Of Settlement Conferences.** The courts shall include in the Notice of Trial, the time and place of the mandatory settlement conference and the dates that settlement conference statements are to be lodged. Unless otherwise designated or agreed upon by all parties and counsel, the settlement conference will be held in the courthouse at Ukiah. A settlement conference will not be re-set by the parties or continued without the express approval of the settlement conference official. The parties shall notify the court clerk of all changes in settlement conference dates.

The court will attempt, to the extent possible, to schedule settlement conferences involving parties and counsel from the Mendocino Coastal areas somewhere on the coast.

- b. Sanctions for Failure to Lodge Timely and Sufficient Settlement Conference Statement.** It is the court's intention to require substantial compliance by all parties and their counsel in the timely filing of settlement conference statements which include all items listed in (d) below applicable in the particular case. Failure to substantially comply with the requirements herein, shall result in sanctions, continuance of the trial date or such other action as the court deems just under the circumstances.

- c. Contents of Settlement Conference Statement.** Each party's settlement conference statement shall contain the following:

1. Complete List of Each Item of Property of Value in Excess of \$1,000

- a. Separate Property.** List each item of separate property, the date it was acquired, the basis upon which it is

claimed as separate rather than community property, the current market value, the nature, extent, and terms of payment of any encumbrance against the property, the manner in which title thereto is presently vested, and the record title data.

- b. Community Property.** List each item of community property, the date it was acquired, the current market value, the nature, extent, and terms of payment of any encumbrance against the property, the manner in which title thereto is presently vested, and the record title data.
- c. Funds Held by Others.** To the extent that either separate property or community property consists of funds held by others, such as insurance policies, pensions, profit sharing, or other trust or retirement funds, the statement shall fully identify the policy or fund, including policy, serial or account numbers, the present values and basis for calculation, and any special terms or conditions known to the party imposed upon the withdrawal of such funds. If any loans exist against any of these funds, the details regarding those loans should be set forth.
- d. Tracing and Reimbursement.** If a segregation of community property and separate property interests in a single asset is to be an issue in the case, the statement shall set forth in detail, with dates, value, and dollar amounts, the transactions relevant to the tracing issue as well as the basis for computation or proration.

For reimbursement claims under Family Code section 2640, the statement shall set forth the community asset from which reimbursement is claimed, and the basis upon which it is claimed separate funds were invested into the asset, including the amounts, dates, and whether or not there are any writings between the parties evidencing an intent to waive the right of reimbursement.

- e. Claim for Reimbursement.** The statement shall include any claims for reimbursement under Family Code section 2641, to wit, community contributions to education or training, with specific dates, amounts, and nature of the contributions.

2. Current Obligations

- a. Separately list all debts and obligations of the spouses which are liabilities of the community and, so far as known, debts and obligations which are alleged to be the separate liabilities of the respective spouses. Specify the identity of the creditor, the purpose for which the debt was incurred, the date upon which the debt was incurred, the balance currently due thereon, the terms of payment and the security, if any, held by the creditor.
- b. Any party who is claiming reimbursement for payments of obligations since the date of separation shall specify creditor, the purpose for which the debt was incurred, including which party has possession of the asset, if any, for which the debt was incurred, as well as the dates and amounts of any payments for which reimbursement is sought.

3. **Current Income and Expenses.** Specify and set forth current income and expenses by completing and filing an Income and Expense declaration in the form prescribed by rule 1285.50 of the California Rules of Court. Previously filed Income and Expense declarations shall not be considered as compliance with this requirement if any facts have changed.
4. **Proposal for Property Division.** Prepare a proposal for equal division of community property and liabilities on the judicial council forms or other format which provides the same information as the judicial forms.
5. **Custody, Visitation and Support.** Specify each party's proposal as to child custody and visitation and as to amount of child support and amount and duration of spousal support.
6. **Appraisals of Real or Personal Property.** Each party may attach to the statement a copy of an appraisal of any real or personal property by a qualified appraiser. Within five (5) days after receipt of the settlement conference statement or fifteen (15) days before trial, whichever is later, if no written demand is made to cross examine the appraiser, the appraisal shall be deemed to have been stipulated as admissible in evidence without foundation and without the appearance of the appraiser.

7. Valuation of Certain Assets

- a. **Motor Vehicles.** If there is a dispute as to the value of a motor vehicle, the value will usually be fixed at the mid-point between the high and low value shown in Kelley's Blue Book, unless the circumstances show that a different valuation should be made.
 - b. **Unusual Assets.** When there are assets of an unusual nature such as oriental rugs, antiques, unusual jewelry, works of art, and handcrafted items, the parties prior to trial should endeavor to agree and stipulate to the use of a qualified appraiser for any such items. Preferably, this should be with the understanding that the report of the appraiser will be admitted into evidence without the necessity of the appraiser personally appearing at trial.
 - c. **Valuing Furniture, Furnishings and Tools.** With regard to normal furniture, furnishings and tools, the age of the items is much more important than initial purchase price or replacement cost. The test is the fair market value of the items as of the date of trial. Used furniture has a low value on the open market. If the parties are unable to agree on a division and valuation of the furniture, one option available to the court shall be the liquidation of all assets and the equal division of the proceeds from said liquidation.
 - d. **Personal Property Worth Less Than \$1,000.** In the event there are items of personal property worth less than \$1,000 that are not listed in the settlement conference statement but that are in dispute as to either value or disposition, each party shall have prepared for the court and opposing counsel no later than the time set for trial a list of said items of personal property including the valuation and proposed division.
8. **Conduct of the Settlement Conference.** Counsel, together with their clients, shall be present at the scheduled settlement conference absent good cause. The parties may resolve any and/or all issues at the settlement conference. For example, the parties may agree to issues of valuation of certain assets without agreeing on the actual division of said assets.
- a. **Good Faith Attempts at Settlement; Attorney's Fees.** It is the goal of the court as well as the settlement conference officials that a sincere attempt will be made

by all parties and counsel to reach a resolution of the issues at the settlement conference. To the extent there are issues that remain unresolved at the conclusion, the settlement conference official may at his or her discretion note in a sealed envelope the unresolved issue and his or her recommendation to the parties for its resolution. The settlement conference official shall notify the parties during the conference of his or her intention to note a recommendation in a sealed envelope. Thereafter, if the case proceeds to trial, at the conclusion of the trial, the trial judge may consider the recommendations of the settlement conference official in conjunction with an award of attorney's fees pursuant to Family Code section 271.

- b. Pretrial Conference.** To the extent that the parties and the settlement conference official agree that a pretrial conference would be of assistance, such a conference shall be recommended/scheduled by the settlement conference official at the conclusion of said conference.

Eff. Jan. 1, 1999.

15.9 Family Law Trial Rules

- a. Exchange of Documentary Evidence to be Used at Trial.** No less than seven (7) calendar days prior to the date set for trial, each party shall provide the opposing party or, if represented, the opposing counsel with a list of all documents and/or documentary evidence intended to be used at trial. The list shall indicate which documents have been previously provided. Copies of all documents which have not been previously provided shall be attached to the list. In the event that the documents to be used are voluminous, either side may notify the other no less than fourteen (14) calendar days prior to the date set for trial and forthwith give the opposing party the opportunity to inspect and copy the documents. Absent a showing of good cause, documentary evidence which has not been exchanged as set forth above shall not be offered or admitted at trial.
- b. Trial Briefs and Motions In Limine.** Unless otherwise ordered by the settlement conference official or by other court order, all parties, not less than seven (7) calendar days before the date first set for trial, must serve and file all motions in limine, briefs on all significant disputed issues of laws, including foreseeable procedural and evidentiary issues setting forth briefly the party's position and the

supporting arguments and authorities. All such papers filed in a tardy manner shall only be considered by the trial judge upon good cause shown and within his or her discretion, upon imposition of sanctions.

Eff. Jan. 1, 1999.

15.10 Family Law Facilitator

- a. Policy.** It is the policy of the court to encourage all unrepresented parties to meet with the family law facilitator before appearing in court.
- b. Services.** The family law facilitator shall provide the following services: 1) providing educational materials to parents concerning the process of establishing parentage and establishing, modifying, and enforcing child and spousal support; 2) distributing necessary court forms and voluntary declarations of paternity; 3) providing assistance in completing forms; 4) preparing support schedules based upon statutory guidelines; and 5) providing referrals to the district attorney, family court services, and other community agencies and resources that provide services for parents and children.
- c. Additional Services for Litigants and Clerk.** At the direction of the court the family law facilitator shall provide the following additional services: 1) Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance, subject to Family Code section 10012. Actions in which one or both of the parties are unrepresented by counsel shall have priority. 2) Drafting stipulations to include all issues agreed to by the parties, which may include issues other than those specified in section 10003. 3) If the parties are unable to resolve issues with the assistance of the family law facilitator, prior to or at the hearing, and at the request of the court, the family law facilitator shall review the paperwork, examine documents, prepare support schedules, and advise the judge whether or not the matter is ready to proceed. 4) Assist the clerk in maintaining records. 5) When so directed by the court prepare formal orders consistent with the court's announced order in cases where both parties are unrepresented. 6) Serving as a special master in proceedings and making findings to the court unless he or she has served as a mediator in that case.
- d. Additional Services to the Court and Community.** When the additional services to the litigants and the clerk have been completed, then at the direction of the court the family law facilitator may also provide the following services: 1) Assist the court with research and any other responsibilities which will enable the court to be more

responsive to the litigants' needs. 2) Develop programs for bar and community outreach through day and evening programs, videotapes, and other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to family court.

Eff. Jan. 1, 1999.

15.11 Miscellaneous Rules

- a. Approval of Orders.** Absent good cause, all orders after hearing or by oral stipulation in court shall be approved as to form by opposing counsel. In the event opposing counsel has not returned an original form of order submitted to them within ten (10) calendar days of mailing, then the party submitting the order may submit a new original to the court with a declaration regarding said mailing and lack of response from opposing counsel. Failure of counsel to return such a proposed order or to communicate meaningfully with opposing counsel concerning the proposed order may be the basis for the court imposing sanctions.
- b. Continuance Fees.** A continuance fee will be charged for continuances in all family law matters, with the following three exceptions:
 - 1.** In law and motion matters, for each motion or order to show cause, one continuance (from the original date calendared) will be allowed at no charge;
 - 2.** There will be no charge for continuances of law and motion matters if the reason for the continuance is ongoing mediation;
 - 3.** When a case has been set for hearing or trial on the short cause or long cause calendar, there will be no charge for a one-time continuance if agreed upon by the parties and if the court is notified in writing at least 15 calendar days before the date set for the hearing.

Eff. Jan. 1, 1999.